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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,816	04/24/2006	Florence Henry	C 2874 PCT/US	9093

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COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

EXAMINER

MI, QIUWEN

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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03/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,816	Applicant(s) HENRY ET AL.	
	Examiner QIUWEN MI	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-31 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/20/07; 9/26/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 11-21, and species surfactants, in the reply filed on 1/17/08 is acknowledged. The traversal is on the ground(s) that the groups form a general inventive concept. This is not found persuasive, because as set forth in the last office action, the inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: As inventions Group I contains at least one dermatopharmaceutical auxiliary and/additive; whereas inventions Group II and III do not require to contain at least one dermatopharmaceutical auxiliary and/additive, therefore, there is no special technical feature in the application. Accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1, and therefore lack of unity of invention exists.

The requirement is still deemed proper and is therefore made FINAL.

Claims Pending

Claims 11-31 are pending. Claims 1-10 are cancelled. Claims 11-21 are examined on the merits.

Claim Objections

Claim 11 is objected to because of the following informalities: Claim 11 recites “*Argania spinosa*” (line 2), which should be italicized. Appropriate correction is required.

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites “The composition according to claim 11, incorporated into a medicament for the treatment of skin damaged by UV-A and/or UV-B radiation”. Therefore, the metes and bounds of claims are rendered vague and indefinite, as it is unclear whether a medicament comprising the composition of claim 11 is being claimed, or the composition of claim 11 only is being claimed, in a particular context when it is incorporated into a medicament for the treatment of skin damaged by UV-A and/or UV-B radiation.

The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections –35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al (Triterpenes and sterols isolated from the pulp of *Argania spinosa* (L.), Sapotaceae, *Plantes Medicinales et Phytotherapie* 25 (203), 112-117, 1991) (see full translation attached), in view of Fabre et al (FR 2724663A1).

Charrouf et al teach that tripterpenic alcohols and sterols were isolated from the unsaponifiable fraction of the pulp's lipidic extract of *Argania spinosa*, and these compounds are lupeol, beta and alpha-amyrines, etc (see page 1, Abstract). Charrouf et al also that Argan tree (the same as *Argania spinosa*) produces a fruit called "Argan", which is formed of a fleshy part or pulp and a very hard core containing an oleaginous seed. Argan oil extracted using traditional methods is used in traditional medicine for diseases of the skin, against chickenpox and acne, and against aging of the skin (page 1, last paragraph bridging page 2).

Charrouf et al do not teach the claimed amount of the extract or auxiliaries in the composition.

Fabre et al teach the process for enriching argan oil in unsaponifiable component and that the enriched argan oil can be used in cosmetic compositions in an amount of 0.5-3 wt.% to prevent skin from aging and drying out (see Abstract, and the rejection is based on the Abstract).

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It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use 0.5-3 wt% argan oil in a cosmetic composition (wherein the rest of the components in the cosmetic composition are obviously dermatopharmaceutical auxiliary and/or additive) as taught by Fabre et al. Since Fabre et al teach that argan oil in cosmetic compositions in an amount of 0.5-3 wt% prevents skin from aging and drying out, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the auxiliaries in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, which is dependent on viscosity of the final cosmetic product that is needed.

The intended use of the composition in claim 18 was analyzed for patentable weight. It is deemed that the preamble 'breathes life' into the claims in that the prior art product must not be precluded for use as treatment of skin damaged by UV-A and/or UV-B radiation. It is deemed that the composition disclosed by the cited references is not precluded for carrying out the intended function of the claims.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charrouf et al and Fabre et al as applied to claims 11-19 and 21 above, and further in view of Martin et al (US 6,616,936).

The teachings of Charrouf et al and Fabre et al are set forth above and applied as before.

The combination of Charrouf et al and Fabre et al do not specifically teach a surfactant in the composition.

Martin et al teach a composition comprising an oil-in-water emulsion (thus contains surfactant) (see Title). Martin et al also suggest that the composition can also comprise additives that are routinely introduced into cosmetic compositions, for example, argan oil (col 4, lines 45-55).

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the oil-in-water (water is a dermopharmaceutical auxiliary) emulsion (with surfactants) of Martin et al in the composition made obvious from the combined teachings of Charrouf et al and Fabre et al since cream or lotions with surfactant are conventional cosmetics that is well known in the art. Since all of the references report the utilization of argan oil on skin, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the auxiliaries in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, which is dependent on viscosity of the final cosmetic product that is needed.

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The intended use of the composition in claim 18 was analyzed for patentable weight. It is deemed that the preamble 'breathes life' into the claims in that the prior art product must not be precluded for use as treatment of skin damaged by UV-A and/or UV-B radiation. It is deemed that the composition disclosed by the cited references is not precluded for carrying out the intended function of the claims.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qiuwen Mi

/Terry A. McKelvey/
Supervisory Patent Examiner, Art Unit 1655